

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:17-cv-01243-RDM

NATURAL RESOURCES DEFENSE COUNCIL, INC. v.
 UNITED STATES ENVIRONMENTAL PROTECTION
 AGENCY

Assigned to: Judge Randolph D. Moss
 Cause: 05:552 Freedom of Information Act

Plaintiff

**NATURAL RESOURCES DEFENSE
 COUNCIL, INC.**

Date Filed: 06/26/2017
 Jury Demand: None
 Nature of Suit: 895 Freedom of
 Information Act
 Jurisdiction: U.S. Government Defendant

represented by **Aaron S. Colangelo**
 NATURAL RESOURCES DEFENSE
 COUNCIL
 1152 15th Street, NW
 Suite 300
 Washington, DC 20005
 (202) 289-2376
 Fax: (202) 289-1060
 Email: acolangelo@nrdc.org
ATTORNEY TO BE NOTICED

Jared Eldridge Knicley
 NATURAL RESOURCES DEFENSE
 COUNCIL
 1152 15th Street, NW
 Suite 300
 Washington, DC 20005
 (202) 513-6242
 Email: jknicley@nrdc.org
ATTORNEY TO BE NOTICED

V.

Defendant

**UNITED STATES
 ENVIRONMENTAL PROTECTION
 AGENCY**

represented by **Joshua L. Rogers**
 U.S. ATTORNEY'S OFFICE FOR THE
 DISTRICT OF COLUMBIA
 555 Fourth Street, NW
 Washington, DC 20530
 (202) 252-2578
 Fax: (202) 252-2599
 Email: joshua.rogers3@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

| Date Filed | # | Docket Text |
|------------|----------|--|
| 06/26/2017 | <u>1</u> | COMPLAINT against UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (Filing fee \$ 400 receipt number 0090-5005487) filed by NATURAL RESOURCES DEFENSE COUNCIL, INC.. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summons)(Knicley, Jared) (Entered: 06/26/2017) |
| 06/26/2017 | <u>2</u> | LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by NATURAL RESOURCES DEFENSE COUNCIL, INC. (Knicley, Jared) (Entered: 06/26/2017) |
| 06/26/2017 | | Case Assigned to Judge Randolph D. Moss. (md) (Entered: 06/26/2017) |
| 06/26/2017 | <u>3</u> | STANDING ORDER: The parties are hereby ORDERED to comply with the directives in the attached Standing Order. See document for details. Signed by Judge |

| | | |
|------------|-----------|--|
| | | Randolph D. Moss on 6/26/2017. (lcrdm1,) Modified on 7/5/2017 to correct grammatical error (kt). (Entered: 06/26/2017) |
| 06/26/2017 | <u>4</u> | SUMMONS (3) Issued Electronically as to UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, U.S. Attorney and U.S. Attorney General (Attachments: # <u>1</u> Notice of Consent) (md) (Entered: 06/26/2017) |
| 06/30/2017 | <u>5</u> | NOTICE of Appearance by Aaron S. Colangelo on behalf of NATURAL RESOURCES DEFENSE COUNCIL, INC. (Colangelo, Aaron) (Entered: 06/30/2017) |
| 07/12/2017 | <u>6</u> | NOTICE of Appearance by Joshua L. Rogers on behalf of UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (Rogers, Joshua) (Entered: 07/12/2017) |
| 07/13/2017 | <u>7</u> | RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY served on 6/30/2017 (Attachments: # <u>1</u> Exhibit A)(Knicley, Jared) (Entered: 07/13/2017) |
| 07/13/2017 | <u>8</u> | RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 07/03/2017. (Attachments: # <u>1</u> Exhibit A)(Knicley, Jared) (Entered: 07/13/2017) |
| 07/13/2017 | <u>9</u> | RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 7/3/2017. Answer due for ALL FEDERAL DEFENDANTS by 8/2/2017. (Attachments: # <u>1</u> Exhibit A)(Knicley, Jared) (Entered: 07/13/2017) |
| 08/01/2017 | <u>10</u> | Consent MOTION for Extension of Time to File Answer by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (Attachments: # <u>1</u> Text of Proposed Order)(Rogers, Joshua) (Entered: 08/01/2017) |
| 08/03/2017 | | MINUTE ORDER: Upon consideration of the Consent Motion for Extension of Time <u>10</u> , the motion is hereby GRANTED. Defendant is hereby ORDERED to respond to Plaintiff's operative complaint on or before September 25, 2017. Signed by Judge Randolph D. Moss on 8/3/2017. (lcrdm1,) (Entered: 08/03/2017) |
| 08/03/2017 | | Set/Reset Deadlines: Response to Plaintiff's operative complaint due by 9/25/2017. (kt) (Entered: 08/03/2017) |
| 08/09/2017 | <u>11</u> | AMENDED COMPLAINT against UNITED STATES ENVIRONMENTAL PROTECTION AGENCY filed by NATURAL RESOURCES DEFENSE COUNCIL, INC.. (Attachments: # <u>1</u> Amended Complaint – Redline)(Knicley, Jared) (Entered: 08/09/2017) |
| 09/25/2017 | <u>12</u> | MOTION for Extension of Time to File Answer re <u>11</u> Amended Complaint by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (Attachments: # <u>1</u> Text of Proposed Order)(Rogers, Joshua) (Entered: 09/25/2017) |
| 09/25/2017 | <u>13</u> | Memorandum in opposition to re <u>12</u> MOTION for Extension of Time to File Answer re <u>11</u> Amended Complaint filed by NATURAL RESOURCES DEFENSE COUNCIL, INC.. (Attachments: # <u>1</u> Text of Proposed Order)(Knicley, Jared) (Entered: 09/25/2017) |
| 09/26/2017 | | MINUTE ORDER: Upon consideration of Defendant's Motion for Extension <u>12</u> , the motion is hereby GRANTED in part and DENIED in part. As per this Court's Standing Order in Civil Cases, "[a]bsent extraordinary circumstances, contested motions for extension of time sh[ould] be filed at least three business days before the relevant deadline." See Dkt. <u>3</u> at 5. Here, the Court ordered Defendant to respond to Plaintiff's operative complaint "on or before September 25, 2017," Minute Order (Aug. 3, 2017), but the Court did not receive Defendant's motion for an extension until that same date. In addition, Defendant has not made a specific showing of a need for an extension of the length requested but, rather, merely notes that counsel is "diligently working to resolve this case as well as many others" and that counsel is deciding whether the "proper course of action" would be to file a motion to dismiss rather than an answer. Dkt. <u>12</u> at 1–2. Nonetheless, the Court will grant Defendant a two–week extension, and will hereby ORDER that it file its response to Plaintiff's amended complaint on or before October 10, 2017. Signed by Judge Randolph D. Moss on 9/26/2017. (lcrdm1,) (Entered: 09/26/2017) |

| | | |
|------------|-----------|--|
| 09/26/2017 | | Set/Reset Deadlines: Answer due by 10/10/2017. (kt) (Entered: 09/26/2017) |
| 10/04/2017 | <u>14</u> | STIPULATION <i>Joint Stipulation and Proposed Order as to Count One of the Amended Complaint</i> by NATURAL RESOURCES DEFENSE COUNCIL, INC.. (Knicley, Jared) (Entered: 10/04/2017) |
| 10/10/2017 | <u>15</u> | MOTION to Dismiss <i>or, in the Alternative, for Summary Judgment</i> by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (Attachments: # <u>1</u> Statement of Facts, # <u>2</u> Exhibit, # <u>3</u> Text of Proposed Order)(Rogers, Joshua). Added MOTION for Summary Judgment on 10/11/2017 (znmw). (Entered: 10/10/2017) |
| 10/10/2017 | <u>16</u> | ERRATA (<i>Declaration Attached</i>) by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY <u>15</u> MOTION to Dismiss <i>or, in the Alternative, for Summary Judgment</i> filed by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY. (Attachments: # <u>1</u> Declaration)(Rogers, Joshua) (Entered: 10/10/2017) |
| 10/11/2017 | <u>17</u> | ORDER: Upon consideration of the parties' Joint Stipulation and Proposed Order <u>14</u> , it is hereby ORDERED that the Stipulation is approved. It is further ORDERED that EPA will process the documents identified under the agreed-upon search terms and disclose to NRDC records responsive to the FOIA Request as follows: (1) On before November 15, 2017, EPA will review at least 4500 documents and disclose to NRDC all responsive, non-exempt e-mails and attachments identified during that process; (2) On or before December 29, 2017, EPA will review at least 4500 additional documents (for a total of at least 9000 documents) and disclose to NRDC all responsive, non-exempt e-mails and attachments identified during that process; (3) On or before January 31, 2018, EPA will review all remaining documents and disclose to NRDC all responsive, non-exempt e-mails and attachments identified during that process; (4) If EPA withholds in part or in whole any record or records responsive to the FOIA Request, EPA will provide to NRDC an initial index identifying all such records and the basis for the withholdings on or before January 31, 2018; (5) On or before February 14, 2018, the parties will confer regarding whether there are outstanding matters to be resolved under Count One of the Amended Complaint, including the form and necessity of any final Vaughn index, such as whether a sample or categorical Vaughn index is appropriate in this matter. This Stipulation does not resolve, affect, or address any portion of Counts Two or Three of the Amended Complaint. See document for details. Signed by Judge Randolph D. Moss on 10/11/2017. (lcrdm1,) (Entered: 10/11/2017) |
| 10/13/2017 | <u>18</u> | ERRATA by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY <u>15</u> MOTION to Dismiss <i>or, in the Alternative, for Summary Judgment</i> MOTION for Summary Judgment filed by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY. (Attachments: # <u>1</u> Text of Proposed Order)(Rogers, Joshua) (Entered: 10/13/2017) |
| 10/19/2017 | <u>19</u> | Unopposed MOTION for Extension of Time to File Response/Reply as to <u>15</u> MOTION to Dismiss <i>or, in the Alternative, for Summary Judgment</i> MOTION for Summary Judgment by NATURAL RESOURCES DEFENSE COUNCIL, INC. (Attachments: # <u>1</u> Text of Proposed Order)(Colangelo, Aaron) (Entered: 10/19/2017) |
| 10/21/2017 | | MINUTE ORDER: Upon consideration of Plaintiff's Unopposed Motion for Extension of Time <u>19</u> , it is hereby ORDERED that the motion is GRANTED. Plaintiff shall file its opposition to Defendant's Motion to Dismiss <i>or, in the Alternative, for Summary Judgment</i> on or before November 3, 2017. Signed by Judge Randolph D. Moss on 10/21/2017. (lcrdm1,) (Entered: 10/21/2017) |
| 10/23/2017 | | Set/Reset Deadlines: Plaintiff shall file its opposition to Defendant's Motion to Dismiss <i>or, in the Alternative, for Summary Judgment</i> on or before 11/3/2017. (kt) (Entered: 10/23/2017) |
| 11/03/2017 | <u>20</u> | Cross MOTION for Summary Judgment <i>as to Counts Two and Three of the Amended Complaint</i> by NATURAL RESOURCES DEFENSE COUNCIL, INC. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Statement of Facts and Resp. to Def.'s Statement of Facts, # <u>3</u> Declaration of Mitchell S. Bernard, # <u>4</u> Declaration of Jared E. Knicley (and exhibits), # <u>5</u> Text of Proposed Order)(Knicley, Jared) (Entered: 11/03/2017) |
| 11/03/2017 | <u>21</u> | Memorandum in opposition to re <u>15</u> MOTION to Dismiss <i>or, in the Alternative, for Summary Judgment</i> MOTION for Summary Judgment filed by NATURAL RESOURCES DEFENSE COUNCIL, INC.. (Knicley, Jared) (Entered: 11/03/2017) |

| | | |
|------------|-----------|--|
| 11/09/2017 | <u>22</u> | Consent MOTION for Extension of Time to <i>Reply</i> by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (Attachments: # <u>1</u> Text of Proposed Order)(Rogers, Joshua) (Entered: 11/09/2017) |
| 11/09/2017 | | MINUTE ORDER: Upon consideration of Defendant's Motion for Extension <u>22</u> , it is hereby ORDERED that the motion is GRANTED. Defendant shall file its Reply to Plaintiff's Opposition to Defendant's Motion for Summary Judgment on or before December 13, 2017. Signed by Judge Randolph D. Moss on 11/9/2017. (lcrdm1,) (Entered: 11/09/2017) |
| 11/13/2017 | | Set/Reset Deadlines: Reply to Motion for Summary Judgment due by 12/13/2017. (kt) (Entered: 11/13/2017) |
| 11/15/2017 | <u>23</u> | MOTION for Extension of Time to File <i>Response</i> by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (Attachments: # <u>1</u> Text of Proposed Order)(Rogers, Joshua) (Entered: 11/15/2017) |
| 11/16/2017 | | MINUTE ORDER: Upon consideration of Defendant's Consent Motion for an Extension of Time <u>23</u> , it is hereby ORDERED that the motion is GRANTED. Defendant shall respond to Plaintiff's Cross-Motion for Summary Judgment on or before December 13, 2017. Signed by Judge Randolph D. Moss on 11/16/2017. (lcrdm1,) (Entered: 11/16/2017) |
| 11/16/2017 | | Set/Reset Deadlines: Defendant shall respond to Plaintiff's Cross-Motion for Summary Judgment on or before 12/13/2017. (kt) (Entered: 11/16/2017) |
| 12/08/2017 | <u>24</u> | Consent MOTION for Extension of Time to File Response/Reply as to <u>20</u> Cross MOTION for Summary Judgment <i>as to Counts Two and Three of the Amended Complaint</i> by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (Attachments: # <u>1</u> Text of Proposed Order)(Rogers, Joshua) (Entered: 12/08/2017) |
| 12/11/2017 | | MINUTE ORDER: Upon consideration of Defendant's Consent Motion for Extension of Time <u>24</u> , it is hereby ORDERED that the motion is GRANTED. Defendant shall respond to Plaintiff's Cross-Motion for Summary Judgment on or before December 15, 2017. Signed by Judge Randolph D. Moss on 12/11/2017. (lcrdm1,) (Entered: 12/11/2017) |
| 12/11/2017 | | Set/Reset Deadlines: Response to Cross Motions due by 12/15/2017. (kt) (Entered: 12/11/2017) |
| 12/15/2017 | <u>25</u> | REPLY to opposition to motion re <u>20</u> Cross MOTION for Summary Judgment <i>as to Counts Two and Three of the Amended Complaint</i> , <u>15</u> MOTION to Dismiss <i>or, in the Alternative, for Summary Judgment</i> MOTION for Summary Judgment filed by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY. (Attachments: # <u>1</u> Statement of Facts)(Rogers, Joshua) (Entered: 12/15/2017) |
| 12/19/2017 | <u>26</u> | ERRATA by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY <u>25</u> Reply to opposition to Motion, filed by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY. (Rogers, Joshua) (Entered: 12/19/2017) |
| 12/22/2017 | <u>27</u> | REPLY to opposition to motion re <u>20</u> Cross MOTION for Summary Judgment <i>as to Counts Two and Three of the Amended Complaint</i> filed by NATURAL RESOURCES DEFENSE COUNCIL, INC.. (Attachments: # <u>1</u> Statement of Facts)(Knicley, Jared) (Entered: 12/22/2017) |
| 05/23/2018 | <u>28</u> | Joint STATUS REPORT by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY. (Rogers, Joshua) (Entered: 05/23/2018) |
| 06/08/2018 | <u>29</u> | NOTICE OF SUPPLEMENTAL AUTHORITY by NATURAL RESOURCES DEFENSE COUNCIL, INC. (Attachments: # <u>1</u> PEER v. EPA)(Knicley, Jared) (Entered: 06/08/2018) |
| 06/19/2018 | <u>30</u> | RESPONSE re <u>29</u> NOTICE OF SUPPLEMENTAL AUTHORITY filed by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY. (Rogers, Joshua) (Entered: 06/19/2018) |
| 07/23/2018 | <u>31</u> | NOTICE OF SUPPLEMENTAL AUTHORITY by NATURAL RESOURCES DEFENSE COUNCIL, INC. (Attachments: # <u>1</u> Judicial Watch v. DHS)(Knicley, Jared) (Entered: 07/23/2018) |

| | | |
|------------|-----------|--|
| 08/03/2018 | <u>32</u> | RESPONSE re <u>31</u> NOTICE OF SUPPLEMENTAL AUTHORITY filed by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY. (Rogers, Joshua) (Entered: 08/03/2018) |
| 04/19/2019 | <u>33</u> | MEMORANDUM OPINION & ORDER: Defendant's motion for summary judgment, Dkt. 15, is hereby DENIED, and Defendant's motion to dismiss, Dkt. 15, and Plaintiff's cross-motion for summary judgment, Dkt. 20, are hereby DENIED without prejudice. See document for details. Signed by Judge Randolph D. Moss on 4/19/2019. (lcrdm1,) (Entered: 04/19/2019) |
| 07/23/2019 | <u>34</u> | Joint STATUS REPORT by NATURAL RESOURCES DEFENSE COUNCIL, INC.. (Knicley, Jared) (Entered: 07/23/2019) |
| 07/28/2019 | | MINUTE ORDER: Upon consideration of the parties' joint status report, Dkt. <u>34</u> , it is hereby ORDERED that the parties shall file a further joint status report on or before Friday, August 23, 2019. Signed by Judge Randolph D. Moss on 7/28/2019. (lcrdm1,) (Entered: 07/28/2019) |